

**Material Transportation Co., Inc. and its successor Sco-Ric Trucking, Inc. and General Drivers, Warehousemen, Dockmen & Helpers of America, Local Union No. 373, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 26-CA-8055**

September 10, 1982

# **SUPPLEMENTAL DECISION AND ORDER**

**BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER**

On January 15, 1981, the National Labor Relations Board issued an Order against Respondent Material Transportation Co., Inc., herein called Respondent Material Transportation, in which the Board ordered, *inter alia*, that Respondent Material Transportation make whole certain of its employees for any loss of pay they may have suffered by reason of Respondent's discrimination against them.<sup>1</sup> On September 10, 1981, the United States Court of Appeals for the Eighth Circuit entered its Judgment enforcing in full the Board's Order.<sup>2</sup> A controversy having arisen over the amounts of backpay due the discriminatees, the Regional Director for Region 26, on November 10, 1981, issued and caused to be served upon Respondent Material Transportation his backpay specifications and notice of hearing, alleging, *inter alia*, the amounts of backpay due. The backpay specification also alleged that Sco-Ric Trucking, Inc., herein called Respondent Sco-Ric, was a successor to Material Transportation.

On December 11, 1981, Respondents' counsel filed an answer on behalf of Material Transportation, and a motion to quash and a response on behalf of Sco-Ric Trucking.

On April 2, 1982, the General Counsel filed with the Board its Motion for Partial Summary Judgment, with exhibits attached. Subsequently, on April 8, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion should not be granted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>1</sup> The Administrative Law Judge having found that Respondent had engaged in certain unfair labor practices, and having issued a recommended Order to remedy such unfair labor practices, and no exceptions having been filed, the Board administratively adopted said findings, conclusions, and order. (Not reported in volumes of Board decisions.)

<sup>2</sup> *N.L.R.B. v. Material Transportation Co., Inc.*, Docket No. 81-1886 (1981).

Upon the entire record in this proceeding, the Board makes the following:

## **Ruling on the Motion for Partial Summary Judgment**

The General Counsel contends that Respondent Material Transportation failed in its answer to provide appropriate supporting figures as required under Section 102.54(b), Series 8, as amended, of the Board's Rules and Regulations; and that Respondent Sco-Ric failed to file a timely answer pursuant to Section 102.54(c), Series 8, as amended.

In its answer, Material Transportation denied that Sco-Ric was a successor employer, but admitted that the backpay computations were correct for one employee,<sup>3</sup> and contended that the computations for the other nine employees were excessive due to a decline in the volume of work done by Material Transportation during the relevant time periods; the failure of the employees to seek other employment, or the failure to report accurately interim earnings; and the failure of the Regional Director to deduct unemployment compensation received by the discriminatees.<sup>4</sup> Material Transportation also set forth the alleged percentage reduction in work done, how this would affect the reduction in backpay due the employees, and what the correct backpay figures should be.

In its answer Sco-Ric filed with the Regional Director its motion to quash and response of the specification and notice of hearing alleging that proper service had not been had on Sco-Ric<sup>5</sup> and the specification and notice should be quashed; and denying that it was a successor employer, or that it had knowledge regarding the accuracy of the backpay specifications.

On December 17, 1981, the Regional Office returned Sco-Ric's motion to quash and its response, inasmuch as the motion, pursuant to Section 102.24 of the Board's Rules and Regulations, should have been filed with the administrative law judge, in care of the chief administrative law judge in the appropriate office.<sup>6</sup>

The record shows with respect to Respondent Materials Transportation that its answer constituted more than a general denial, in that it provided an alleged percentage reduction in work for each dis-

<sup>3</sup> Employee Charles Jones.

<sup>4</sup> It is well established that amounts paid for unemployment compensation are not deductible from gross backpay. *Gullett Gin Company, Inc. v. N.L.R.B.*, 340 U.S. 361 (1951); *Sioux Falls Stock Yards*, 236 NLRB 543, 548 (1978).

<sup>5</sup> The record shows that service was perfected by the Regional Office on December 11, 1981.

<sup>6</sup> While the Region inadvertently also returned Sco-Ric's response, we find that the response was properly and timely filed, and have duly considered the matters raised therein.

criminatee, which in turn provided an alleged amount due for gross backpay. Thus, we find that the requirements of Section 102.54(b) have been satisfied.<sup>7</sup> Accordingly, we shall deny the Motion for Partial Summary Judgment against Material Transportation.

We also find that the matter of successorship is properly in issue. Both Material Transportation and Sco-Ric have denied that the latter is a successor employer. Thus, as Sco-Ric was not a party to the underlying unfair labor practice proceeding, we see no reason to depart from our normal practice, and, therefore, we conclude that a hearing to determine whether Sco-Ric is a successor employer is necessary.<sup>8</sup> Accordingly, we shall deny the Motion for Partial Summary Judgment against Sco-Ric Trucking.

Material Transportation, as alluded to earlier, also alleges that the discriminatees did not diligently seek to mitigate losses during the backpay period or did not accurately report such earnings, and that the scheduled hearing should include these issues of alleged interim earnings. Inasmuch as the Board has held that a general denial is sufficient to place such earnings into issue as the information is

generally not within the knowledge of Respondent, we find that Respondent Material Transportation's assertions as to failure to seek and retain available interim employment is sufficient to put into issue the general question of interim earnings.<sup>9</sup> It is our understanding, moreover, that the General Counsel does not oppose Respondent's right to pursue this avenue at the hearing.

#### ORDER

It is hereby ordered that the General Counsel's Motion for Partial Summary Judgment be, and it hereby is, denied.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 26 for the purpose of arranging a hearing before an administrative law judge to determine gross backpay for Leon Bledsoe, Joe Duran, Oba Henson, Steven Cole, Wesley Howard, James Inks, Dan Yates, Kenneth Williams, and Boda Heath; interim employment or interim earnings of the discriminatees; net interim earnings; and whether Respondent Sco-Ric Trucking, Inc., is a successor employer to Respondent Material Transportation, Co., Inc., and that the Regional Director be, and he hereby is, authorized to issue notice thereof.

<sup>7</sup> *J. S. Alberici Construction Co., Inc.*, 249 NLRB 751 (1980).

<sup>8</sup> *Dews Construction Corp., a subsidiary of the Aspin Group, Inc.*, 246 NLRB 945, 946 (1979).

<sup>9</sup> *Meilman Food Industries, Inc.*, 255 NLRB 70 (1981).